

ITEL

RECORDATION NO. 13073-A
FILED 1981

AUG 10 1981 - 10:05 AM

Rail Division INTERSTATE COMMERCE COMMISSION

Two Embarcadero Center
San Francisco, California 94111
(415) 955-9090
Telex 34234

Under 13073

File Record

1-222A023

No. **AUG 10 1981**
Date.....
Fee \$ **10.00**
ICC Washington, D. C.

June 11, 1981

Ms. Agatha Mergenovich, Secretary
Interstate Commerce Commission
Washington, D.C. 20223

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. Section 11303(a) and the Interstate Commerce Commission's rules and regulations thereunder, I enclose herewith on behalf of ITEL, for filing and recordation under the Lease Agreement dated as of April 22, 1981 between ITEL Corporation, Rail Division ("ITEL"), and Green Bay and Western Railroad Company which was filed on April 30, 1981 at 10:50 A.M. and given recordation number 13073, three counterparts of the following document:

Assignment of Lease and Agreement, dated as of April 22, 1981 between ITEL and First Security Bank of Utah, N.A., as Trustee (the "Assignment")

The names and addresses of the parties to the aforementioned Assignment are:

1. ITEL Corporation, Rail Division
Two Embarcadero Center
San Francisco, CA 94111
2. First Security Bank of Utah, N.A.
Corporate Trust Department
79 South Main Street
Salt Lake City, Utah 84111

The Equipment covered by the Assignment is one hundred forty nine (149) 70-ton Boxcars (A.A.R. mechanical designation XM; 50'6" in length) bearing the reporting marks GBW 8049 through and including GBW 8197.

*Ms. Lee
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13073-
and I
do not know
the next
letter.*

*Counterparts-
GERARD JOHNSON*

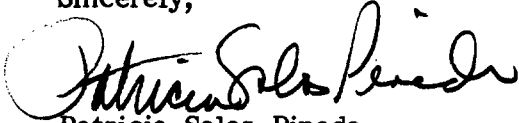
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RECORDATION BR.

Ms. Agatha Mergenovich
June 11, 1981
Page Two

Also enclosed is a check for \$10.00 for the required recordation fee.

Please stamp all counterparts of the enclosed document with your official recording stamp. You will wish to retain one (1) counterpart of the document for your files; it is requested that the remaining two (2) counterparts be delivered to the bearer of this letter.

Sincerely,



Patricia Salas Pineda
Counsel

PSP:sc
Enclosures

cc: Michael Walsh, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10020

Robert S. Clark, Esq.
First Security Bank of Utah, N.A.
79 South Main Street
Salt Lake City, Utah 84111

Margaret Mackenzie
IteI Corporation

13073-
L-0183
6/10/81

RECORDATION NO. 13073-A
FILED 1425

AUG 10 1981 - 10:10 AM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASE AND AGREEMENT, dated as of and effective as of April 22, 1981 (hereinafter called the "Assignment"), by and between **ITEL CORPORATION**, a Delaware corporation (together with its successors and assigns, being hereinafter called "Itel") and **FIRST SECURITY BANK OF UTAH, N.A.**, as Trustee, incorporated and existing under the laws of the United States of America (hereinafter called the "Trustee").

WHEREAS, Itel and the Trustee have entered into an Equipment Trust Agreement, dated as of February 1, 1978 (such Equipment Trust Agreement, together with any amendments or supplements thereto, being hereinafter called the "Agreement"); and

WHEREAS, Itel and Providence and Worcester Company (hereinafter called "P&W") entered into a lease of Equipment (as defined in the Agreement), dated as of January 14, 1977, (such lease, together with any amendments or supplements thereto, being hereinafter called the "P&W Lease"), pursuant to which Itel leased to P&W 150 of the units of Trust Equipment (as defined in the Agreement), bearing reporting marks PW 554 through and including PW 703; and

WHEREAS, in order to provide security for the obligations of Itel under the Agreements, Itel assigned to the Trustee for security purposes only, all of Itel's rights, title and interest in, to and under the P&W Lease as an only to the extent the P&W Lease relates to the Trust Equipment by means of a document entitled Assignment of Lease and Agreement, dated as of March 28, 1978; and

WHEREAS, subsequent to December 12, 1977, one of the aforesaid units of Trust Equipment, which bore reporting mark PW 627, was destroyed, leaving one hundred forty-nine (149) units of Trust Equipment subject to the P&W Lease; and

WHEREAS, the P&W Lease has been terminated with respect to the above-referenced Trust Equipment by means of a document entitled Amendment No. 3 to the Lease Agreement, dated as of December 18, 1979; and

WHEREAS, Itel and Green Bay and Western Railroad Company (hereinafter called the "Lessee") have entered into a lease, dated as of April 22, 1981 (such lease, together with any amendments or supplements thereto, being hereinafter called the "Lease") pursuant to which Itel leased to the Lessee the above-referenced 149 units of Trust Equipment, formerly leased by Itel to P&W; and

WHEREAS, pursuant to the Lease, Itel has undertaken to remark the 149 units of Trust Equipment with the reporting marks set forth on Annex A attached hereto; and

WHEREAS, the Lease may also cover the leasing to the Lessee of other equipment not included as part of the Trust Equipment; and

WHEREAS, in order to continue to provide security for the obligations of Itel under the Agreement, Itel agrees to assign for security purposes only its rights in, to and under the Lease to the Trustee as and only to the extent that the Lease relates to the Trust Equipment.

NOW, THEREFORE, in consideration of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. Itel hereby assigns, transfers and sets over unto the Trustee, as collateral security for the payment and performance of Itel's obligations under the Agreement, all of Itel's right, title and interest, powers, privileges and other benefits under the Lease as and only to the extent that the Lease relates to the Trust Equipment set forth in Annex A hereto, including, without limitation, all rights to receive and collect all rentals, profits and other sums payable to or receivable by Itel from the Lessee under or pursuant to the provisions of the Lease to the extent that the same are payable in respect of such Trust Equipment, whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such monies being hereinafter called the Payments); **PROVIDED, HOWEVER,** that until an Event of Default under the Agreement, or any event which, with notice or lapse of time or both, could constitute such an Event of Default, shall occur, it is understood that Itel shall be entitled to collect and receive all such Payments and to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to apply all Payments to which Itel is entitled to the payment of any and all of Itel's obligations under the Agreement and to retain the balance, if any. In furtherance of the foregoing assignment, but subject to the foregoing provisions of this paragraph, Itel hereby irrevocably authorizes and empowers the Trustee in its own name, or in the name of its nominee, or in the name of Itel or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which Itel is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof. Whenever a Lease covers other equipment not included as part of the Trust Equipment and the amount of any payment due to Itel under such Lease as car hire payments (including both straight and incentive per diem), mileage charges or other rental revenues is calculated on an aggregate basis for all equipment leased thereunder, for the purposes of this Assignment an amount equal to the Assigned Fraction (as hereinafter defined) of each such payment shall be deemed to be payable with respect to such Trust Equipment leased under such Lease. The term "Assigned Fraction" as used herein shall mean a fraction the numerator of which shall be the number of units of equipment comprising such Trust Equipment leased under such Lease and the denominator of which shall be the aggregate number of units of equipment (including such units of Trust Equipment) at the time leased under such Lease.
2. This Assignment is executed only as security for the obligations of Itel under the Agreement and, therefore, the execution and delivery of this Assignment shall not subject the Trustee to, or transfer, or pass, or in any way affect or modify, the liability of Itel under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of Itel to the Lessee shall be and remain enforceable by the Lessee, its successor and assigns, against, and only against Itel or persons other than the Trustee.

3. To protect the security afforded by this Assignment, Itel agrees as follows:
 - (a) Itel will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides is to be performed by Itel.
 - (b) At Itel's sole cost and expense, Itel will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of Itel under the Lease.
 - (c) Should Itel fail to make any payment or to do any act which this Assignment requires Itel to make or do, then the Trustee, but without obligation so to do, after first making written demand upon Itel and affording Itel a reasonable period of time within which to make such payment or do such act, but without releasing Itel from any obligation hereunder, may make or do the same in such manner and to such extent as the Trustee may deem necessary to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Trustee, and also the right to perform and discharge each and every obligation, covenant and agreement of Itel contained in the Lease; and in exercising any such powers, the Trustee may pay necessary costs and expense, employ counsel and incur and pay reasonable attorneys' fees, and Itel will reimburse the Trustee for such costs, expenses and fees.
4. Upon the full discharge and satisfaction of all of Itel's obligations under the Agreement and this Assignment, all rights herein assigned to the Trustee shall terminate, and all estate, right, title and interest of the Trustee in and to the Lease shall revert to Itel.
5. Itel will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Trustee in order to confirm or further assure, the interests of the Trustee hereunder.
6. If an Event of Default shall occur and be continuing under the Agreement, the Trustee may assign all or any of the rights assigned to it hereby or arising under the Lease, including without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Trustee hereunder. The Trustee will give written notice to Itel and the Lessee of any such assignment.
7. This Assignment shall be governed by the Laws of the State of Utah, but the parties shall be entitled to all rights conferred by the laws of the United States permitting filing with the Interstate Commerce Commission.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective names, by officers thereunto duly authorized, and their respective seals to be affixed and duly attested, all as of the date first above written.

ITEL CORPORATION

By: 
President, Rail Division

FIRST SECURITY BANK OF UTAH
National Association, as Trustee

By: 
Asst. Trust Officer

ANNEX A

<u>No. of Units</u>	<u>Road Numbers</u>	<u>Description</u>	<u>AAR Mechanical Designation</u>
149	GBW 8049-8197 (Inclusive)	70-ton, 50'6" boxcars with 10' sliding doors and 10" end-of- car cushioning.	XM

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO)

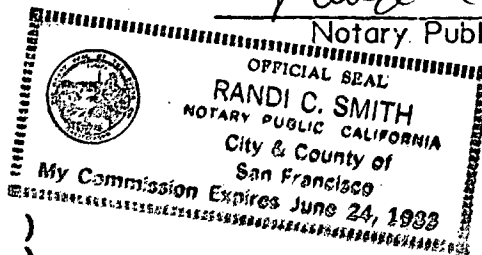
SS:

On this 15th day of June, 1981, before me personally appeared Edward M. O'Dea, to me personally known, who, being by me duly sworn, says that he is President of **ITEL CORPORATION, RAIL DIVISION**, that said instrument was signed on behalf of said corporation by authority of its By-laws and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Randi C. Smith

Notary Public

My Commission Expires:



STATE OF UTAH)

COUNTY OF SALT LAKE)

SS:

On this 18th day of June, 1981, before me personally appeared JOHN R. SAGER Asst., to me personally known, who, being by me duly sworn, says that he is a Trust Officer of **FIRST SECURITY BANK OF UTAH, National Association**, a national banking association, that said instrument was signed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Frederick B. Eisenberg
Notary Public

My Commission Expires:

November 20, 1983